The question then arises: Does the ministerial directive, by purporting to do, supply the powers that are lacking under sections 118 and and 119? In my opinion the answer must be in the negative because the authority of the Minister of Transport to give general directives is, by sub-section (3) of section 107, expressly made "subject to the provisions of this Part of this Ordinance," that is to say, Part V, and is limited to directives on policy to be followed in determining applications, not matters arising thereafter.

It is clear law that no rule, regulation or by-law made under statutory powers must go beyond or be repugnant to the enactment under which they are made. It is also trite law that the validity of delegated legislation as a general rule can be canvassed by the Courts, and that in the absence of express statutory provision to the contrary, the Courts may inquire whether the rule-making power has been exercised in accordance with the provisions of the statute by which it is created.

I think I need cite only one authority in this connection: *Rossi* v. *Edinburgh Corporation.*[1] There the question was raised whether the civic authority had power to make regulations for the sale of ice cream in the form of a licence purporting to give effect to the Edinburgh Corporation Acts, 1900 and 1901. The statutes only made a licence necessary for the sale of ice cream, but the licence issued went further to limit the days and hours of sale. It was held that the licence as drawn was *ultra vires.* In that case Lord Davey said:

"In the year 1900 the town council or the magistrates of Edinburgh thought fit to apply to the Legislature and the Legislature passed an Act for the regulation of billiard-rooms and the sale of ice-cream. I must assume that there were circumstances connected with the trade of selling ice-cream in the city of Edinburgh which justified the intervention of the Legislature and made it right to impose special provisions on the sale of ice-cream which are not applicable to the sale of similar commodities. But, every restriction and every regulation such as I find in the Act of 1900, repeated in the provisional order of 1901, is of course *pro tanto* a restraint upon the ordinary right of every British subject. It is in fact a restraint of trade, and I am of opinion that although the section of the Act and the provisional order in which I find such provisions ought to be construed fairly and ought to be construed so as reasonably to effect the object which the Legislature must be presumed to have had in view, *you ought not by implication to extend the restriction of that particular trade further than the Legislature* has sanctioned, and still less ought you to give such a construction to clauses of that description as would impose a restraint, not only upon the exercise of the particular trade which is in question but also upon the exercise of other trades which are not in question."

For the very same reasons I hold that it was *ultra ires* the Licensing Board to impose the condition prohibiting any person not a Malay from driving the appellant's taxi. I accordingly allow the appeal and set aside the conviction and sentence. The fine, if paid, should be refunded.

Under article 128 of the Constitution, as amended by section 14(2) of the Malaysia Act, 1963, I have no jurisdiction to pronounce any decision as to the effect of any provision of the Constitution; consequently this appeal must be allowed on the first ground alone. My view, however, will be stated on the second ground should this appeal be carried further by the Public Prosecutor under section 66 of the Courts of Judicature Act, 1964.

Appeal allowed.

Solicitors: *Cheang Lee & Ong.*

LIM LIAN GEOK v. THE MINISTER OF THE INTERIOR, FEDERATION OF MALAYA

[P.C. (Lord Cohen, Lord Evershed, Lord Morris of Borth-Y-Gest, Lord Hodson and Lord Donovan) March 23, 1964]

[Privy Council Appeal No. 23 of 19[illegible]]

Constitutional Law—Citizenship—Deprivation of—Constitution of the Federation of Malaya, arts. 25, 27—Validity of notice sent to citizen—Meaning of "ground" in art. 27—Requirement of particulars—"Disloyalty" and "disaffection".

On August 12, 1961, the Registrar-General of Citizens issued a notice to the appellant notifying him of a proposal to make an order under article 25 of the Federal Constitution to deprive him of his citizenship and drew his attention to article 27(2) which entitled the appellant to have his case referred to a Committee of Inquiry. The notice stated that if this right to an inquiry was not claimed the Government "will proceed to make the order" depriving him of citizenship. The notice alleged that the appellant had shown himself by act and speech to be "disloyal" and "disaffected" towards the Federation.

On September 12, 1961, an order of prohibition *nisi* was granted to the appellant prohibiting the Minister of the Interior from referring the appellant's case to a Committee of Inquiry. On appeal by the Minister, this order *nisi* was discharged on October 13, 1961, ([1962] M.L.J. 159). Against this decision, the appellant appealed to the Court of Appeal which dismissed the appeal on January 4, 1962 ([1962] M.L.J. at p. 165). On appeal to the Privy Council, the appellant argued: (a) the notice was defective as it was lacking in particulars and details of what was alleged against him; (b) the notice, though purportedly following a prescribed form, was in disregard of the rules of natural justice and expressed an unwarranted threat or indication; (c) the matters of complaint in the notice, even if true, could not reasonably amount to "disloyalty" or "disaffection" within article 25(1)(a).

Held: (1) article 27(1) requires notifying the citizen of the "ground" on which it is proposed to make the order. The word "ground" refers to that part (or parts) of articles 24 or 25 or 26 which is (or are) being invoked. In this case the appellant was informed that he had shown himself by "act and speech to be disloyal and disaffected towards the Federation of Malaya." That was the "ground" and no further particulars were therefore necessary;

(2) the words in the notice that if an inquiry is not claimed the Federal Government "will proceed to make the order" read in the context of the notice as a whole, were not calculated to mislead and meant that

at that stage the Government was provisionally satisfied as to certain things. It did not involve that the Government will proceed in any irregular manner or in defiance of any requirements of law or otherwise than in due and proper course;

(3) the conduct as set out in the notice were, if true, capable of warranting the view that a person had shown himself by act and speech to be disloyal and disaffected towards the Federation.

Per curiam: "In holding as their Lordships do that the notice would have been effective even if the particulars had not been included their Lordships do not wish in any way to discourage the giving of particulars in a notice whenever it is thought to be desirable to give them. Their Lordships cannot however accede to the submission that full and elaborate particulars must at that stage be given or that a person concerned cannot without them decide whether to exercise his right to have his case referred....Though there are no express provisions which require that any particulars that are reasonably desired should at that stage be given their Lordships agree with the view expressed by Good J.A. that it is implicit in the procedure that this should be so."

PRIVY COUNCIL.

E. F. N. Gratiaen, Q.C., and *T. O. Kellock* for the appellant.

Lord Bledisloe, Q.C., and *P. G. Clough* for the respondent.

The judgment of the Lords of the Judicial Committee of the Privy Council was delivered by,

Lord Morris of Borth-Y-Gest: The main question which arises in this appeal concerns the validity of a notice which was served upon the appellant and which was issued by the Registrar-General of Citizens of the Federation of Malaya and dated the 12th August 1961. The notice informed the appellant that the Federal Government proposed to make an order under article 25 of the Federation of Malaya Constitution depriving him of his citizenship of the Federation of Malaya and gave him notice that unless within a period of one month from the date of serving upon him of the notice he claimed to have his case referred to a Committee of Inquiry the Federal Government would "proceed to make" an order. The precise terms of the notice must later be considered. The appellant on an *ex parte* application to the High Court at Kuala Lumpur obtained on the 13th September 1961 an order *nisi* prohibiting the respondent from referring the appellant's case to a Committee of Inquiry under clause (2) of article 27 of the Constitution until the order *nisi* should be made absolute or discharged and ordering the respondent to show good cause on or before the 4th October 1961 why the said prohibition should not be made absolute. On the 13th October 1961 the order *nisi* was, on the respondent's motion, discharged by an order made by Thomson C.J. The appellant appealed to the Court of Appeal of the Supreme Court of the Federation of Malaya. By order dated the 4th January 1962 the appeal was dismissed. By order of the Supreme Court of the Federation of Malaya dated the 15th May 1962 the appellant was granted final leave to appeal to His Majesty the Yang di-Pertuan Agong.

The appellant was born in China and went to Malaya in 1929. In 1951 he became by registration a citizen of the then Federation of Malaya. By reason of article 28 of the Constitution, which had the force of law as from the 31st August 1957 (see S.I. 1957 No. 1533), the appellant was treated as a citizen by registration under article 17 of the Constitution.

Article 24 of the Constitution contains certain provisions enabling the Federal Government to make an order depriving a person of his citizenship if, as set out in the article, he has acquired or exercised foreign citizenship.

Article 25 of the Constitution is in the following terms:—

"25. (1) Subject to clause (3), the Federal Government may by order deprive of his citizenship any person who is a citizen by registration under article 17 or a citizen by naturalization if satisfied —

(a) that he has shown himself by act or speech to be disloyal or disaffected towards the Federation;

(b) that he has, during any war in which the Federation is or was engaged, unlawfully traded or communicated with an enemy or been engaged in or associated with any business which to his knowledge was carried on in such manner as to assist an enemy in that war; or

(c) that he has, within the period of five years beginning with the date of the registration or the grant of the certificate, been sentenced in any country to imprisonment for a term of not less than twelve months or to a fine of not less than five thousand dollars or the equivalent in the currency of that country, and has not received a free pardon in respect of the offence for which he was so sentenced.

(2) subject to clause (3), the Federal Government may by order deprive of his citizenship any person who is a citizen by registration under article 17 or a citizen by naturalization if satisfied that he has been ordinarily resident in foreign countries for a continuous period of seven years and during that period has neither —

(a) been at any time in the service of the Federation or of an international organisation of which the Federal Government was a member; nor

(b) registered annually at a Malayan Consulate his intention to retain his citizenship.

(3) No person shall be deprived of citizenship under this article unless the Federal Government is satisfied that it is not conducive to the public good that that person should continue to be a citizen; and no person shall be deprived of citizenship under clause (1) if, as the result of the deprivation, he would not be a citizen of any country outside the Federation."

Article 26 of the Constitution contains other provisions for deprivation of citizenship and is in the following terms:—

"26. (1) Subject to clause (3), the Federal Government may by order deprive of his citizenship any citizen by registration or by naturalisation if satisfied that the registration or certificate of naturalisation —

(a) was obtained by means of fraud, false representation or the concealment of any material fact; or

(b) was effected or granted by mistake.

(2) Subject to clause (3), the Federal Government may by order deprive of her citizenship any woman who is a citizen by registration under clause (1) of article 15 if satisfied that the marriage by virtue of which she was registered has been dissolved, otherwise than by death, within the period of two years beginning with the date of the marriage.

(3) No person shall be deprived of citizenship under this article unless the Federal Government is satisfied that it is not conducive to the public good that that person should continue to be a citizen; and no person shall be deprived of citizenship under paragraph (b) of clause (1) unless the notice required by article 27 is given within the period of twelve months beginning with the date of the registration or of the grant of the certificate, as the case may be.

(4) Except as provided by this article, the registration of a person as a citizen or the grant of a certificate of naturalisation to any person shall not be called in question on the ground of mistake."

Article 27 prescribes certain procedure in regard to deprivation.

It is in the following terms:—

"27. (1) Before making an order under article 24, 25 or 26, the Federal Government shall give to the person against whom the order is proposed to be made notice in writing informing him of the ground on which the order is proposed to be made and of his right to have the case referred to a committee of inquiry under this article.

(2) If any person to whom such notice is given applies to have the case referred as aforesaid the Federal Government shall, and in any other case the Federal Government may, refer the case to a committee of inquiry consisting of a chairman (being a person possessing judicial experience) and two other members appointed by that Government for the purpose.

(3) In the case of any such reference, the committee shall hold an inquiry in such manner as the Federal Government may direct, and submit its report to that Government; and the Federal Government shall have regard to the report in determining whether to make the order."

The articles above referred to are contained in Part III of the Constitution and article 31 provided for the application of the provisions contained in the Second Schedule. Included in that schedule are the following provisions:—

"1. The functions of the Federal Government under Part III shall be exercised by such Minister of that Government as the Yang di-Pertuan Agong may from time to time direct, and reference in this Schedule to the Minister shall be construed accordingly.

2. A decision of the Federal Government under Part III shall not be subject to appeal or review in any court.

6. Subject to Federal law, the Minister may make rules and prescribe forms for the purpose of the exercise of his functions under Part III and this Schedule."

The Yang di-Pertuan Agong directed that the functions of the Federal Government under Part III should be exercised by The Minister of Interior and Justice — who is the respondent. (Legal Notification (New Series) No. 33 of 1957 as amended by Legal Notification No. 49 of 1959). Pursuant to his power under 6. above the respondent did make rules *viz.* Citizenship Rules 1960 (Legal Notification 310 of 1960). Rule 3 (1) of these rules is as follows:—

"3. (1) The Minister may appoint a Registrar-General of Citizens of the Federation of Malaya and as many Registrars, Deputy Registrars and Assistant Registrars as he deems necessary in order to give effect to the objects of Part III of the Constitution and the Second Schedule thereto."

Rule 22 of these rules is as follows:—

"22. The Notice given by the Federal Government to a person against whom the deprivation order is proposed to be made under the provisions of article 27 of the Constitution shall be in the form Q set out in the Schedule to these Rules."

The notice that was served upon the appellant was undoubtedly in the prescribed form. The prescribed "Form Q" concluded with a space for the signature of the "Registrar-General of Citizens of the Federation of Malaya."

The notice read as follows:—

"To Mr. Lim Lian Geok alias Lim Chai Koo of 52/2, Jalan Raja Muda Musa, Kampong Bahru, Kuala Lumpur.

WHEREAS it has been represented to the Federal Government that you LIM LIAN GEOK a Citizen of the Federation of Malaya, have shown yourself, since 1957, by act and speech to be disloyal and disaffected towards the Federation of Malaya, in that you did make:

(a) deliberate misrepresentation and inversion of Government Education Policy in a manner calculated to excite disaffection against the Yang di-Pertuan Agong and the Government of the Federation: and

(b) emotional appeals of an extreme communal nature calculated to promote feelings of ill-will and hostility between different races in the Federation likely to cause violence.

AND WHEREAS the Federal Government proposes to make an Order under article 25 of the Federation of Malaya Constitution depriving you of your Citizenship of the Federation of Malaya.

NOW, THEREFORE, I Ibrahim bin Ali, the Registrar-General of Citizens of the Federation of Malaya acting on behalf of the Federal Government DO HEREBY GIVE YOU NOTICE that unless within one Calendar month from the date of service upon you of this Notice, you inform me in writing that you claim that your case be referred to a Committee of Inquiry constituted for that purpose by the Federal Government under article 27(c) of the said Constitution, the Federal Government will proceed to make the Order of depriving you of your Citizenship of the Federation of Malaya.

Dated this 12th day of August, 1961.

(SEAL) Registrar-General of Citizens of the Federation of Malaya.'

The notice was served upon the appellant by registered post on the 14th August 1961. He did not make claim, within the period of one month thereafter, to have his case referred to a Committee of Inquiry. What he did, as already stated, was to apply *ex parte* for an order prohibiting the respondent from referring the case to a Committee of Inquiry. His notice of motion was dated the 12th September 1961. He had previously, i.e. on the 5th September, written a letter to the Registrar-General of Citizens saying that he was advised that the power to deprive of citizenship was vested in the Minister alone who had no power to delegate that function to any

other official or authority: in his letter the appellant asked that the notice should be withdrawn and a proper notice served if it was the Federal Government's intention to deprive him of his citizenship. To that letter a reply had been sent on the 6th September 1961 pointing out that the notice that had been served was a notice which was in accord with rule 22. The appellant was also reminded of the fact that the period of one month ran from the 14th August.

The appellant's notice of motion set out two reasons for his application for an order prohibiting the Minister from referring the case to a Committee of Inquiry under article 27(2). The first was that it was not competent for the Registrar-General to issue the notice that he purported to have issued under rule 22 of the Citizenship Rules. This reason was based upon the view that there had been a delegation by the Minister of his powers to a Registrar-General and that there could not be any such delegation. The second reason was that the allegations made as to the basis for the notice of the 12th August 1961 were not, assuming them to be true, "a sufficient compliance with the requirements of paragraph (a) of article 25(1) of the Constitution". It is to be noted that the reference was to article 25 and not to article 27. The complaint appears to have been, not that the particulars given in the notice of the 12th August 1961 were insufficient, but that, assuming the truth of what was alleged in the particulars, the Federal Government could not on that basis have been satisfied that the appellant had shown himself by act or speech to be disloyal or disaffected towards the Federation. The complaint therefore was not that inadequate particulars had been given but that the weight of the allegations was inadequate to prove disloyalty or disaffection towards the Federation. The complaint was that the particulars lacked substance and not that they lacked detailed statement. Paragraph 6 of the appellant's affidavit in support of his notice of motion was as follows:—

"6. I am further advised that the acts and conduct alleged against me, as being the cause of the proposed deprivation of my citizenship are not, in their very statement capable of falling within para. (a) of article 25(1) and the Notice therefore, even assuming it was issued by the proper authority, is not in its content sufficient for the exercise by the Federal Government of its powers under the Constitution."

On the appellant's *ex parte* application, Ong J. made an order *nisi* of prohibition on the 13th September 1961. Until the order was either made absolute or discharged the respondent was "prohibited from referring the case of the above-named applicant to a Committee of Inquiry under article 27(2) of the Constitution".

The respondent gave notice of motion (dated the 18th September 1961) to have the order *nisi* of prohibition discharged. Included in the grounds for the motion were that:—

"(a) the notice issued by the Registrar-General of Citizens was in the form prescribed by and upon the instructions of the Minister of the Interior and was in compliance with the requirements of article 27 of the Constitution;

(b) the grounds shown in the notice are a sufficient compliance with the requirements of paragraph (a) of clause (1) of article 25 of the Constitution."

In an affidavit in support of his motion the respondent said that upon his own decision he had caused the notice of the 12th August 1961 to be sent and that the notice (in the form prescribed by him in rule 22 of the Citizenship Rules 1960) had been sent to the appellant by the Registrar-General of Citizens of the Federation of Malaya, a civil servant in the respondent's Ministry.

No challenge was made as to the truth of what the respondent said. It would seem to follow that no further reliance could be placed by the appellant upon the first of his two reasons above referred to for applying for an order of prohibition. It was clear that the notice of the 12th August 1961 was not signed by the Registrar-General in the purported exercise of any powers delegated to him.

In his affidavit the respondent, whose good faith was in no way challenged, further said:— "I am satisfied that the act and speech of the applicant justify my decision to proceed under article 27 of the Federal Constitution". The appellant in an affidavit in reply dated the 2nd October 1961 said that he was born in China and that when he went to Malaya in 1929 he had qualified at Amoy in China as a Chinese school teacher. He set out, *inter alia*, his record as a teacher and in the field of education. He said that he had actively taken part in public debates and discussions relating to Chinese education and the Government policy thereon but that he had not taken part in any other public activity nor had acted in any way suggestive of disloyalty or disaffection to the Government. He said that he had always striven to instil a sense of loyalty to the country in Chinese students and had always urged their learning the national language as a means of promoting unity among the several races in the country. He said that his speeches in that connection had been repeatedly broadcast by Radio Malaya.

It is to be observed that the appellant, possibly because of his mistaken belief that there had been some unauthorised delegation of power to the Registrar-General, allowed the period of one month to pass by from the 14th August without claiming to have his case referred to a Committee of Inquiry. It is further to be observed that there does not appear to have been (down to October 1961) any request for further information or any suggestion that the appellant was or had been in any sort of difficulty by reason

of any lack of fuller particularity in the notice of the 12th August. The submission was made, among others, that if the allegations set out under (a) and (b) of the notice of the 12th August were made out in fact, they did not amount to and furthermore were incapable of amounting to proof of disloyalty or disaffection within the meaning of article 25.

After hearing argument on the 4th and 5th October Thomson C.J. by a judgment delivered on the 13th October 1961 discharged the order *nisi*. In considering article 25(1)(a) he said that the Minister must have certain grounds of fact in his mind: that the grounds must consist of acts or speech: that the person against whom the order is proposed to be made should be informed what the grounds are: and that the grounds of fact should be capable, if made out, of showing, as a matter of law, disloyalty or disaffection towards the Federation. He said that the question (under article 25(3)) whether or not it was conducive to the public good that the person concerned should continue to be a citizen would arise for decision if it was made out that there had been acts or speeches which showed disloyalty or disaffection.

It is clear from the judgment of the learned Chief Justice that the main question which was argued before him was whether the grounds as stated in the notice of the 12th August 1961 were such as to be capable in law of showing disloyalty or disaffection. There is no reference to any question as to whether the notice was deficient as being lacking in adequate particularity. Though the learned Chief Justice appears to have proceeded on the assumption that an inquiry was going to be held or had to be held (whereas article 27(2) only obliges the Federal Government to refer a case if the person concerned applies to have it referred, the matter being otherwise in the discretion of the Federal Government) the basis of his view is not as a result invalidated. His view in effect was that the grounds as stated in the notice of the 12th August 1961 were capable in law, if made out, of showing disloyalty or disaffection. It does not appear that at the hearing before the learned Chief Justice there was consideration of any differentiation between the ground on which a deprivation order is proposed and particulars of such grounds.

The appellant then appealed to the Court of Appeal. It appears from the memorandum of appeal that it was still being maintained that there had been a delegation of powers by the respondent to the Registrar-General. Among the grounds of appeal it was said that the learned Chief Justice ought to have held that both in its form and in its content the notice was bad in law and that "the matters of complaint stated therein even assuming them to be true, were not such as to be capable of attracting the altogether excessive penalty of deprivation of citizenship, having regard to the provisions of article 25 of the Constitution." It was further said in the grounds of appeal that the learned Chief Justice ought to have held "that the Minister's affidavit not having condescended to any particulars setting out the facts and circumstances on the faith of which he attained the requisite satisfaction" it was not possible to say whether there were good grounds or any grounds for such satisfaction. It is to be observed that the reference just quoted was to the Minister's affidavit and not to the notice of the 12th August 1961. Among other matters raised in the memorandum of appeal it was said that "in any event the second ground stated in the notice" was by itself incapable of providing the required satisfaction on the part of the Minister because it alleged criminal offences against him which if proved would have no more effect than to render him liable to punishment in accordance with the law. It is to be observed that the matters referred to under (b) in the notice were treated as being a "ground" on which the proposed order was to be made.

After hearing argument on the 14th December 1961 the Court of Appeal (Hill J.A., Good J.A., Hepworth J.) gave judgment on the 4th January 1962 dismissing the appeal.

In his judgment Hill J.A. held that there had not either in fact or in law been any delegation of the Minister's functions. He held that all that article 27(1) requires is that the notice should state the ground on which an order is proposed so that the requirement involved setting out for example whether it was ground (a) or ground (b) or ground (c) as respectively referred to in article 25(1) but did not involve or necessitate the giving of particulars or details or circumstances or allegations as in fact had been done in the notice of the 12th August 1961 under the headings (a) and (b). Though he felt that what was set out under those headings in the notice could have been more happily worded he considered that the appellant was in fact left in no sort of doubt and was in fact clearly and unequivocally informed by the notice that the "ground" on which the Federal Government proposed to make the order was ground (a) of article 25(1).

In his judgment, agreeing with that of Hill J.A., Good J.A. pointed out that "ground" (a) of article 25(1) involved that a person might be deprived of citizenship by reason either of his actions or of his words where such actions or words had shown him to be either disloyal or disaffected towards the Federation. He said that at the stage of the issue of a notice the only purpose for which the supervisory jurisdiction of the Court could be invoked was to ascertain

whether the essential preliminary steps had been properly taken according to law. He said:— "The Government is not yet committed to depriving the appellant of his citizenship: it has only announced its intention of doing so if the appellant does not within a specified time claim that his case be referred to a Committee of Inquiry as provided by article 27." He held that the making and issuing of the notice was the Minister's own act and not that of the Registrar-General. He held that the notice was not invalidated so long as it gave, at that stage, sufficient notice of the ground upon which the Government proposed to rely: he said that "it would have been sufficient if the notice had merely informed the appellant that it was proposed to deprive him of his citizenship on the ground of acts (or speech) showing him to be disloyal (or disaffected) towards the Federation. Anything further is surplusage, but there could be no misunderstanding in the mind of any person reading the contents of the notice that what was intended was deprivation on ground (a) in article 25(1). In my opinion that is sufficient. The particular allegations will emerge at the inquiry if the appellant elects to ask for one. This is nowhere explicitly stated, but it is implicit in the procedure: there cannot be an inquiry unless there is something to inquire into, and it cannot be an inquiry unless the appellant is told what is alleged against him."

Hepworth J. agreed with the judgments of the President and of Good J.A.

Their Lordships have reached the conclusion that the Court of Appeal were correct in dismissing the appeal and that the appellant was not entitled to the order which, by his motion, he had sought. Before their Lordships it was not argued that the notice was in any way invalid because it was signed by the Registrar-General and it was no longer contended that there had been any delegation by the Minister. The main submissions which were presented to their Lordships related to the content and form of the notice. It was said that the notice was defective because it was lacking in particulars. It was said that before a person could or ought to be called upon to decide whether he would claim to have his case referred to a Committee of Inquiry he should be informed in the notice as to the details of what was alleged against him. It was furthermore submitted that the notice, though purporting to follow a prescribed form, was in disregard of the rules of natural justice and expressed an unwarranted threat or indication. It was additionally submitted that though the particulars contained in the notice were inadequate they revealed the general nature of the complaints and that even if the complaints were true they could not reasonably be said to amount to disloyalty or disaffection within the meaning of those words in article 25(1)(a).

It is to be observed that article 27 is a procedure article. Orders of deprivation of citizenship may be made under article 24 or 25 or 26. The procedure under article 27 relates to the preceding three articles. Under the provisions of these three articles there are many and varied circumstances under which the Federal Government if satisfied as to any of them may make an order. Thus if a citizen after Merdeka Day had by voluntary and formal act acquired the citizenship of a country outside the Federation the provisions of article 24 might be brought into play. By way of further example if a citizen had obtained a certificate of naturalisation by means of fraud the provisions of article 26 might apply. Other circumstances are covered by those two articles. Various circumstances are covered by article 25 such as unlawful trading with an enemy during a war or being sentenced (as specified in the article) to a term of imprisonment. The scheme of the article seems therefore to be that in certain circumstances the Federal Government may make an order of deprivation of citizenship but may only do so if certain conditions are fulfilled. In the present case it is quite clear that the provisions of article 25(1)(a) are the primarily operative ones. There is no suggestion that the circumstances contemplated article 25(1)(b) or (c) existed nor those indicated by articles 24 and 26. In the present case the stage of actually making a deprivation could not be reached unless the Federal Government (whose functions are to be exercised by the Minister directed to exercise them) was satisfied (1) that the appellant had shown himself by act or speech to be disloyal or disaffected towards the Federation and (2) that it was not conducive to the public good that the appellant should continue to be a citizen and (3) that deprivation would not have the consequential result that the appellant would not be a citizen of any country outside the Federation. No question arises in this case under (3) and it has been common ground as regards (2) that a decision as to whether it would not be conducive to the public good that the appellant should continue to be a citizen is purely a policy decision for the Government. It is in regard to (1) that the issues arise in the present case. The machinery and procedure laid down by article 27 apply in reference to the process of being satisfied in regard to one or more of the grounds for deprivation which are set out in articles 24, 25, 26. It is not suggested that the machinery of giving a notice applies as such to the question whether a deprivation would be conducive to the public good. The provisions of article 25(3) and of article 26(3) do not contain grounds for deprivation but contain conditions to which regard must be had before an order is made.

As regards being satisfied that a person has shown himself by act or speech to be disloyal or disaffected toward the Federation it would seem clear that if the Federal Government received information to which they gave no credence then no further question would arise. If on the other hand the information as to the act or speech of a person seemed to the Government to establish disloyalty or disaffection, the Government would in the first place only be satisfied as to this in a conditional or provisional way. Article 27 would then come into play. A notice must be given informing the person "of the ground on which the order is proposed to be made and of his right to have the case referred to a Committee of Inquiry". In agreement with the Court of Appeal their Lordships consider that the word "ground" in article 27 refers to that part (or those parts) of articles 24 or 25 or 26 which is (or are) being invoked. In the present case the appellant was informed by the notice that (according to what had been represented to the Government) he had shown himself by act and speech to be disloyal and disaffected towards the Federation of Malaya. That was "the ground". What followed, under the headings (a) and (b), consisted of particulars of the "ground" which had been previously stated. In holding as their Lordships do that the notice would have been effective even if the particulars had not been included their Lordships do not wish in any way to discourage the giving of particulars in a notice whenever it is thought to be desirable to give them. Their Lordships cannot however accede to the submission that full and elaborate particulars must at that stage be given or that a person concerned cannot without them decide whether to exercise his right to have his case referred. If there is an inquiry (which might come about either because a person concerned required one or because the Government decide to have one) then the necessity for giving particulars might arise. Though there are no express provisions which require that any particulars that are reasonably desired should at that stage be given their Lordships agree with the view expressed by Good J.A. that it is implicit in the procedure that this should be so. If an inquiry is held it will be presided over by a chairman (possessing legal experience) sitting with two appointed members. The committee will report and thereafter "the Federal Government shall have regard to the report in determining whether to make the order". This involves that the citizen concerned is to have every reasonable and proper opportunity to deal with the "ground" (or "grounds") on which a deprivation order is proposed. This in turn involves that he must have such reasonable information as he may seek to have in regard to the case against him so as to enable him to deal with it or to answer it or to make such representations in regard to it as he may wish. There would not be a proper inquiry if the citizen concerned was denied such particulars as he might need to have or as he might reasonably request in order to be able to protect his interests.

The fact that in the event of an inquiry being held the Federal Government is to have regard to the report of the inquiry "in determining whether to make" an order shows that any provisional conclusions which may have been formed after receiving information as to any of the "grounds" for a deprivation order must remain provisional until after the receipt of a report or until after it is known that no inquiry is to be held. Only then, under article 25, can the complete stage of "satisfaction" as denoted by article 25(1) be reached. The making of an order requires that additionally there must be satisfaction, in the manner hereinbefore mentioned, concerning the matters referred to in article 25(3). It must be pointed out however that a citizen concerned cannot safely neglect the opportunity which is presented to him when a notice under article 27(1) is given to him. If he decides to ignore such a notice their Lordships see nothing in the Constitution which obliges the Federal Government to give him some later or further or different opportunity to be heard. The Constitution prescribes a form of procedure which seems reasonable and fair and just. A citizen could not spurn his proferred right to have an inquiry and then later complain, if a deprivation order were made, that the Federal Government could not properly have been satisfied because he had not been heard.

In the light of what has been said above their Lordships can deal shortly with the submission that the wording of the prescribed Form Q is open to the objection that it offends the rules of natural justice because it announces a result that would have not been reached by proper process. It was said that its concluding words to the effect that unless an inquiry was claimed the Government "will proceed to make the order depriving you of your Citizenship of the Federation of Malaya" were minatory in tone and unfortunate in expression. Their Lordships consider however that in the context of the notice as a whole the words are not calculated to mislead. It cannot reasonably be said that the Government are announcing settled conclusions which will not be affected even if there is an inquiry. Nor do the words bear the meaning that the Government will proceed to make an order whether or not they are "satisfied" as required by the articles in question. The notice denotes that following upon the receipt of representations the Federal Government are proposing to make an order or in other words have reached the stage of being provisionally satisfied as to certain things. There is nothing

in the notice however which in any way suggests that the spirit and the letter of the relevant articles in the Constitution are not being or will not be followed. The statement that if an inquiry is not claimed the Federal Government will proceed to make an order does not involve that they will proceed in any irregular manner or in defiance of any requirement of law or otherwise than in due and proper course.

The further contention that was advanced was that the matter set out under headings (a) and (b) of the notice, even if true, could not reasonably be said to amount to disloyalty or disaffection. Their Lordships cannot accept this. The complaint was that the appellant had "shown" himself by act and speech to be disloyal and disaffected. All therefore that their Lordships have to decide is whether such conduct as is denoted under the headings (a) and (b) was capable of demonstrating disloyalty or disaffection. If there were an inquiry much would depend upon the details and circumstances but their Lordships cannot hold that the allegations denoted by the wording under headings (a) and (b) were not capable of warranting the view that person had shown himself by act and speech to be disloyal and disaffected towards the Federation.

For the reasons which have been stated their Lordships cannot accept the submissions made on behalf of the appellant. Though he could have claimed an inquiry but did not do so and though he took legal action which has wholly failed and though his time for claiming an inquiry has long since gone by the respondent has stated that he will, if so requested in writing by the appellant within one calendar month after the conclusion of this appeal, himself refer the case to a Committee of Inquiry.

Their Lordships will therefore report to the Head of Malaysia their opinion that the appeal should be dismissed and that the appellant should pay the respondent his costs of this appeal.

Appeal dismissed.

Solicitors: *Graham Page & Co.*; *Wray, Smith & Co.*

OVERSEAS UNION BANK LTD. v. CHUA TENG HWEE trading as REXSON & CO.

[O.C.J. (Winslow J.) March 23, 1964]

[Singapore — Suit No. 41 of 1961]

Banking—Letter of credit—Compliance with terms—Rights of issuing bank.

Indemnity—Liability on letter of indemnity.

On June 10, 1960 the Bank of Tokyo Ltd., Osaka, opened an irrevocable commercial credit in favour of the defendant for account of Marugen Sangyo Co. Ltd., Osaka, up to an amount of £3,375 available by beneficiaries' drafts at sight on the bank's London office for full invoice cost accompanied by a number of stipulated documents which included: "Inspection certificate in duplicate issued by Moine Comte Co. Ltd., Singapore evidencing shipment of about 25 tons of 2240 lbs. of seaweeds (*tengusa*) at Stg. £135 per ton at 2240 lbs. nett C.I.F. Osaka from Singapore to Osaka...."

In due course the defendant presented the letter of credit to the plaintiffs for negotiation submitting the documents asked for in the letter of credit. There were some irregularites in the documents submitted the main one being that whereas the letter of credit required an inspection certificate evidencing shipment of about 25 tons of seaweed (*tengusa*), the certificate submitted was only a certificate of weight of the required quantity of seaweeds, with the qualifying word "*tengusa*" missing. The plaintiffs drew the attention of the defendant to these discrepancies but allowed themselves to be prevailed upon by the defendant to proceed with the negotiation. They took the precaution, however, of obtaining from the defendant a written indemnity against any loss to them arising from the discrepancies.

The letter of credit was duly negotiated and the sum due on it to the defendant was paid to him by the plaintiffs. However, when the discrepancies were later noted by the issuing bank the plaintiffs were asked to refund the amount on the letter of credit to the issuing bank and this the plaintiffs did. The plaintiffs then sought to recover the sum they had paid to the defendant basing their claim on the written indemnity that he had given them.

The main grounds of defence were that (1) there was no discrepancy between the documents required by the letter of credit and those submitted; (2) the plaintiffs were not compellable in law to refund to the issuing bank and should not have done so.

Held: (1) it is clear law that the terms of a letter of credit must be strictly complied with. Where documents are required to be submitted they must be in the exact form stipulated. There is no room for documents which are almost the same or which will do just as well. On the facts of this case there was no such strict accord or exact compliance with the terms of the letter of credit as to justify the plaintiffs in negotiating the draft which was presented;

(2) where the documents are not in compliance with the letter of credit the issuing bank is entitled to refuse payment, and having paid, to demand a refund. The plaintiffs were therefore compellable in law to make the refund; and having done this they were entitled to indemnification on the defendant's written indemnity for actual loss.

Cases referred to:—

(1) *Donald H. Scott & Co. Ltd.* v. *Barclays Bank Ltd.* [1923] 2 K.B. 1.

(2) *Equitable Trust Co. of New York* v. *Dawson Partners Ltd.* (1926) 27 Ll. L.R. 49.

(3) *Rayner & Co. Ltd.* v. *Hambros Bank Ltd.* [1942] 2 All E.R. 694.

(4) *English, Scottish and Australian Bank Ltd.* v. *Bank of South Africa* (1922) Ll. L.R. 21.

(5) *Bank Melli Iran* v. *Barclays Bank* [1951] 2 T.L.R. 1057.

(6) *Malas* v. *British Imex Industries Ltd.* [1958] 1 All E.R. 262.

ACTION.

J. Grimberg for the plaintiffs.

L. A. J. Smith for the defendant.